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In re Application of
BEARDOW, PAUL
Application No.: 10/500,260
PCT No.: PCT/GB02/05609
Int. Filing Date: 11 Dec 2002
Priority Date: 11 Dec 2001
Attorney's Docket No.: 22557-3013/ US
For: Method and Apparatus for Image Construction
And Animation

DECISION

This decision is in response to applicant's "Request for Correction of Filing Receipt and Notification of Acceptance of Application Under 35 U.S.C. 371" filed 30 March 2006, requesting correction of the 371(c) filing date which is being treated as a petition under 37 C.F.R. 1.10(d) to accord a 371(c) filing date of 14 June 2004 to the above-identified application. No petition fee is required.

BACKGROUND

The United States Patent and Trademark Office in its capacity as a Designated/Elected Office (DO/EO) accorded a 371(c) filing date of 15 June 2004 to the above-identified application.

On 13 September 2005 applicant allegedly filed a "Request for Correction of Filing Receipt and Notification of Acceptance of Application Under 35 U.S.C. 371." However, the United States Patent and Trademark Office does not have a record of applicant's filing and applicant has not provided evidence that such a filing has occurred.

On 30 March 2006, applicant filed a subsequent "Request for Correction of Filing Receipt and Notification of Acceptance of Application Under 35 U.S.C. 371" which included a copy of the original papers filed on 13 September 2005. Specifically, applicant filed a copy of the request to enter the national stage showing an "Express Mail" label number ER946868273US, a copy of the postcard receipt showing a receipt date of 15 June 2004, a copy of a United States Postal Service letter indicating that no information could be located regarding item number ER946868273US and, a copy of an "Express Mail Log" page.

DISCUSSION

37 CFR 1.10(d) provides that

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The instant petition complies with 37 CFR 1.10(d)(1).

The petition complies with 37 CFR 1.10(d)(2) because an Express Mail mailing number, ER946868273US, appears on the copy of the request to enter the national stage.

With regard to 37 CFR 1.10(d)(3), petitioner explains that the papers were deposited in an USPS Express Mail drop box located at the intersection of Broadway and 25th Street at 2:40 PM on the afternoon of 11 June 2004. Petitioner provides a copy of the "Express Mail Log" page showing the Express Mail mailing number, the place, date and time of the deposit, the last scheduled pick-up for that date, the depositor's signature and the date and time of entry into the log. The entry into the "Express Mail Log" is deemed to be an adequate showing of the date of deposit.

However, because applicant did not make the deposit directly with an USPS employee it is unclear what is the actual "date-in" date. See 37 C.F.R. 1.10(b). Applicant is required to provide further evidence from the USPS as to the date and time when the pick-up was actually executed by the USPS subsequent to the date and time of deposit of 11 June 2004 at 2:40 PM.

Based on the totality of the evidence currently of record, it would not be appropriate to consider the requirements of 37 C.F.R. 1.10(d) to have been satisfied.

CONCLUSION

Applicant's petition requesting that the application papers be accorded a 371(c) filing date of 14 June 2004 is **DISMISSED**, without prejudice, for the reasons described *supra*.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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